

## Company Law Updates, June 2018

1. **Audit & Auditors:** The MCA by its *Notification dated 7th May, 2018* has amended the *Companies (Audit and Auditors) Rules, 2014* whereby,
  - **Board now do not have power to appoint auditor(s) if appointment is not ratified:** The Explanation given in the said Rule that if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditors or auditors after following the procedure laid down in this behalf under the Act is now omitted.
  - **No ratification required:** Further proviso to the sub-rule 7 that such appointment shall be subject to ratification in every annual general meeting till the sixth such meeting by way of passing of an ordinary resolution shall now be omitted. Rule 10A and Rule 14 have also been amended.
  - **Auditors to report internal financial controls with reference to financial systems:** Rule 10A requires that for the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall about existence of adequate internal financial controls systems and its operating effectiveness. The auditors may voluntarily include the statement referred to in this rule. As per the amendment in the said Rule, it has been prescribed that instead of adequate internal financial controls system, the auditor shall report on internal financial controls with reference to financial systems.
2. **Meetings of the Board and its Powers:** The MCA by its notification dated 7th May, 2018 has amended the *Companies (Meetings of the Board and its Powers) Rules, 2014*. A new provision has been inserted to Rule 4 of the said rules providing that any other director may participate through video conferencing or other audio visual means if there is quorum in a meeting through physical presence of directors.
3. **Appointment and Qualification of Directors:** The MCA by its notification dated 7th May, 2018 has amended the *Companies (Appointment and Qualification of Directors) Rules, 2014* whereby the revised norm provides that in case of appointment of Independent Director, none of the relatives of such independent director should be indebted to the company, its holding subsidiary or associate Company or their promoters, or directors; or has given a guarantee or provided any security in connection with indebtedness of any third person to its holding, subsidiary or associate company or their promoter or directors for an amount of Rs. 50 Lakhs at any time during the two immediately preceding financial years or during current financial year.
4. **Prospectus & Allotment of Securities:** The MCA by its notification dated 7th May, 2018, has amended the *Companies (Prospectus and Allotment of Securities) Rules, 2014*. The amendment prescribes omission of the following rules.
  - Rule 3 (Information to be stated in prospectus)
  - Rule 4 (Reports to be set out in the Prospectus)
  - Rule 5 (Other matters and reports to be stated in the prospectus) and
  - Rule 6 (Period for which information to be provided in certain cases).
5. **Registration Office and Fees:** The MCA by its notification dated 7th May, 2018 has amended the *Companies (Registration Office and Fees) Rules, 2014*. A new provision has been inserted under to Rule 10(3) providing that the Registrar shall allow fifteen

days' time for re-submission in case of reservation of name through web service - RUN for rectification of defects if any. Earlier re-submission was not allowed in case of re-submission of application through RUN. Further in Annexure I of the Companies (Registration Office and Fees) Rules, 2014 prescribes an additional fee of Rs. 100 per day effective from July 1, 2018 for delayed in filing of annual return and financial statements. The additional fee shall also be applicable to revised financial statement or board report as well as Secretarial audit report.

6. **Sections of CA, 2013 coming into force:** The MCA by its notification dated 7th May, 2018 hereby appoints the 7th may, 2018 as the date on which the following provisions of the **Companies (Amendment) Act, 2017** shall come into force, namely:

<b>Section of Amendment Act, 2017</b>	<b>Subject Matter vis-à-vis in the Principal Act (CA, 2013)</b>
2 (i) & xiii)	Substitution of Explanation in Section 2 (6) - Expression 'significant influence' & joint venture
8	Section 26 (1) dealing with Matters to be stated in prospectus after the words signed and shall <i>to include such information and set out such reports in financial information as may be specified by the SEBI in consultations with the Central Government.</i>
13	Omission of clause (c) in Section 54 of the Principal Act dealing with Sweat equity Shares. <i>The condition that not less than one year has, at the date of such issue, elapsed since the date on which the company has commenced business stands omitted now.</i>
18 & 19	In Section 77 of the Principal Act, the fourth proviso to include ... <i>Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.</i> In Section 78 of the Principal Act, instead of registering the charge within a prescribed period, <i>to register the charge within the period of thirty days referred to in sub-section (1) of section 77.</i>
21 (i) & (ii)	In section 89 - Declaration in respect of beneficial interest in any share Authentication of documents, proceedings and contracts, in sub-section (6) declaration within the time specified under section 403 shall be omitted. <i>A new sub-section (10) is inserted in section 89 - For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to -</i> <i>(i) exercise or cause to be exercised any or all of the rights attached to such share; or (ii) receive or participate in any dividend or other distribution in respect of such share.</i>
23 (i) & (ii)	Amendments in Section 92 of CA, 2013 dealing with annual return by way of certain omissions and substitution.
30 & 31	Certain omissions and substitution in Section 117 (Resolutions and agreements to be filed) & 121 of the CA, 2013 dealing with Report on AGM
33	Substitution in sub-section (3) in section 129 of CA, 2013 dealing with

	Financial Statement. <i>(CFS to be in accordance with applicable accounting standards)</i>
39 & 40	Amendment of Section 137 of the Principal Act (copy of the financial statement to be filed with Registrar) <i>in case of foreign subsidiary, the holding Indian company to file unaudited financial statement along with a declaration that if the FS is in a language other than English, a translated copy of the same in English.</i> <i>In section 139 the first proviso to sub-section (1) necessitating ratification of appointment of auditors by members at every AGM is omitted.</i>
46	Amendments in Section 149 of the Principal Act, dealing with qualifications/requirements in the appointment of directors.
49	Amendments in section 157 dealing with DIN
52	Amendment of section 164
54 to 58 (both inclusive)	Amendment in section 167 (vacation of office of director); section 168 (resignation of director); section 173 (quorum of Board meeting though video conferencing); section 177 (4) 3 new provisos providing for TOR of Audit Committee; section 178 (providing for effective evaluation of every director's performance);
61 & 62	Section 185 (Loans to Directors) New Provisions in substitution of old provisions requiring special resolution and explanatory statement) ;SECTION 186 – Loan and investment by company-amendment in sub-section (3);
80 (First proviso)	section 403 substitution of new proviso for the first and second proviso
83	Amendment of section 410 providing orders of the NFRA as well.
86 to 89 (both inclusive)	Amendment of section 435, 438, 439, 440 dealing with Special Courts.

7. **Clarification on Condonation of Delay Scheme, 2018 -(General Circular No. 05/2018 dated 17<sup>th</sup> May, 2018):** In continuation of General Circular No.16/2017, General Circular 02/2018; General Circular No. 03/2018 on the subject, the MCA received representations from stakeholders raising doubts regarding filing requirements of e-CODS, 2018, in such cases, where petitions have already been filed before NCLT under section 252 of the CA, 2013 during the currency of the scheme and order are pending before NCLT and whether such struck off companies can file CODS upon obtaining order for the same even after 01.05.2018. The matter was examined and it is clarified that as per para 4(v) of the General Circular No16/2017 which states *“in the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director’s DIN shall be reactivated only NCLT order of revival subject to the company having filing of all overdue documents”*. It is therefore directed that in such cases the Registrar(s) of Companies shall raise a ticket through Change of Requirement Form (CRF) on MCA21 portal along with copy of NCLT order and E-governance shall activate DIN of the directors of such struck off companies that have been revived through NCLT to file e-CODS, 2018. However, such directors whose DINs are proposed to be activated through CRF should not be directors on any other company which has been struck off under section 248(1) of the Act (other than

the one revived through NCLT order as mentioned in CRF). This may be ensured by the ROC before raising CRF with E-governance.

The Registrar(s) of Companies are directed to ensure that CRF's are raised in such cases only after thorough scrutiny of the NCLT orders and ensuring that such struck off companies had filed overdue documents before filing e-CODS, 2018 and had filed petitions before the NCLT during the validity of the CODS Scheme.